

FAUQUIER COUNTY GOVERNMENT /  
SCHOOL BOARD

PROCUREMENT POLICY

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FAUQUIER COUNTY GOVERNMENT/SCHOOL BOARD  
PROCUREMENT POLICY

Public purchasing embraces a fundamental obligation to the general public to ensure that procurements are accomplished in accordance with the intent of the laws enacted by the appropriate legislative body. The intent of the Virginia General Assembly is set forth in the Virginia Public Procurement Act (Code of Virginia, Section 2.2-4300): "To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business, and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered". Since competition is sought to the maximum feasible degree, when conducted fairly and honestly, competitive procurement does not guarantee that a preferred brand or vendor will be selected: instead, that the most favorable prices will be obtained for that quality level which is specified.

The Fauquier County Government/Public Schools (hereafter collectively referred to as "Fauquier County") intend, through this policy, to assure the best quality and price for products and services; to protect the assets and funds of Fauquier County; and to maintain above-board relations with all suppliers within the Procurement Laws and Business Ethics as dictated by Federal, State, and Fauquier County governments. Therefore the following policy for purchasing is hereby adopted by the Fauquier County Board of Supervisors and School Board and shall take effect immediately.

ARTICLE 1 - GENERAL PROVISIONS

1.1. Application.

This Policy applies to all contracts for goods, services, insurance and construction entered into by Fauquier County. This policy is established by official action of Fauquier County. All provisions of this policy are in conformance with Chapter 7, Sections 2.2-4300 to 2.2-4377 of the Code of Virginia as amended.

When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which is not reflected in this policy.

1.2. Effective Date.

Contracts entered into prior to passage of this Policy shall continue to be governed by the procurement policy and regulations of Fauquier County and State in effect at the time those contracts were executed.

1.3 Severability.

If any provision of this policy or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this policy which can be given effect without the invalid provision or application, and to this end the provisions of this policy are declared to be severable.

1.4 Definitions.

(1) Brand Name Specification. A specification by manufacturers' names and catalogue numbers.

(2) Brand Name or Equal Specification. A brand name specification to describe the standard of quality, performance, and other characteristics needed to meet Fauquier County requirements and which provides for the submission of equivalent products.

(3) Capital Equipment. Tangible personal property includes items such as furnishings and equipment that retains its identity and utility during use, whose parts are repairable or replaceable, and has a useful life expectancy greater than one year.

(4) Capital Improvement Projects. Any major project specifically planned as part of the C.I.P. (land acquisition, construction, etc.) or any project not detailed during the budget process.

(5) Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of Fauquier County and which is not a matter of public knowledge or available to the public on request.

(6) Construction. Building, altering, repairing, improving or demolishing any structure, building, and any draining, dredging, excavation, grading or similar work upon real property.

(7) Goods. All material, equipment, supplies, printing and automated data processing hardware and software.

(8) Governing Body. Fauquier County Board of Supervisors and/or School Board.

(9) Invitation for Bid. All documents, whether attached or incorporated by reference, used for solicitation of competitive sealed bids.

(10) Nominal Value. A fair market value of five dollars (\$5.00) or less.

(11) Informality. A minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, or delivery schedule for the goods, services or construction being procured.

(12) Nonprofessional Services. Any services not specifically identified as professional services within this policy.

(13) Professional Services. Work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law medicine, optometry, pharmacy, dentistry, professional engineering or actuarial services.

(14) Public Body. Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this policy.

(15) Purchasing Agent. The Official in charge of procurement as designated by the Fauquier County Board of Supervisors and/or the School Board. Presently the Supervisor of Procurement.

(16) Request for proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(17) Responsible Bidder or Offeror. A bidder or offeror that has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been pre-qualified, if required.

(18) Responsive Bidder. A bidder that has submitted a bid which conforms in all material respects to the Invitation to Bid.

(19) Services. Any work performed by an independent contractor, except for construction, which does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

(20) Supplies, Materials, Equipment and Commodities. Any goods, articles or things which will be used by or furnished to any department, school, or other offices of the County Government/School System.

(21) Using Departments. All departments, agencies, boards and commissions of the Fauquier County Government/School Board, including consolidated support services, and offices supported from funds approved by Fauquier County.

## **ARTICLE 2 - OFFICE OF THE PURCHASING AGENT**

### **2.1 Establishment and Appointment.**

The purchasing system shall operate under the direction and supervision of the Purchasing Agent in accordance with the provisions in this Policy.

### **2.2 Authority and Responsibilities of the Purchasing Agent.**

(1) Authority. The Purchasing Agent shall serve as the principal public purchasing official for Fauquier County, and shall be responsible for the procurement of goods, services, insurance and construction in accordance with this Policy, as well as the management and disposal of equipment.

(2) Responsibilities. In accordance with this Policy the Purchasing Agent shall:

- A. Purchase or supervise the purchase of all goods, services, insurance and construction needed by Fauquier County;
- B. Establish and maintain programs for specification development, contract administration, inspection, and acceptance, in cooperation, with the school/department/agency or public body that has requested the goods, services, insurance or construction;
- C. Delegate authority to other Fauquier County officials for the purchase of goods, services or construction;
- D. Establish and promulgate procedures to carry out the provisions of this policy;
- E. Secure for Fauquier County the benefits of research done in the field of purchasing by other governmental jurisdictions, national societies, national trade associations, and private businesses and organizations; and
- F. Maintain a current file of sources of goods, services, insurance and construction to be known as a "bidder list" on which vendors can request to be included.

### **2.3 Delegation.**

The Purchasing Agent may delegate purchasing authority, in writing, to purchase certain supplies, services, or construction items to other employees, if such delegation is deemed necessary for the effective procurement of those items.

### **2.4 Revisory Authority.**

The Purchasing Agent shall have the authority to disapprove any purchase as to the quantity or quality of the commodity requested, and shall have the authority to change specifications with the concurrence of the affected agency.

### **2.5 Rules and Regulations.**

The Purchasing Agent shall prepare and maintain a purchasing manual containing detailed rules and regulations, consistent with this Policy and the laws of the Commonwealth of Virginia, governing the operation of Fauquier County purchasing system.

## **ARTICLE 3 - COOPERATIVE PROCUREMENT**

### **3.1 Conditions for Use.**

Pursuant to the authority granted by Section 2.2-4304 of the Virginia Code, Fauquier County may enter into cooperative procurement agreements for the purpose of combining requirements to increase efficiency or reduce administrative expenses in the procurement process.

All cooperative procurement contracts entered into or used by Fauquier County shall be based on procurement principles contained in this Policy.

Fauquier County may participate in or purchase goods and services through contracts awarded by other governmental bodies when it is determined by the Purchasing Agent that cooperative procurement is in the best interest of Fauquier County and the contract is based on competitive procurement principles.

## **ARTICLE 4 - CONTRACT FORMATION AND METHODS OF SOURCE SELECTION**

### **4.1 Competitive Sealed Bidding.**

(1) Conditions for Use. All contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction in excess of Thirty Thousand Dollars (\$30,000) shall be awarded after competitive sealed bidding, or by such other procedures required or authorized by this Policy.

(2) Pre-Qualification of Bidders. The Purchasing Agent is authorized to pre-qualify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking pre-qualification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor be considered a trade secret or proprietary information pursuant to the requirements of Section 2.1-342.B.58 and 2.2-4342 of the Virginia Code.

In all instances in which the Purchasing Agent requires pre-qualification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of pre-qualification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.



At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the pre-qualification applies, the Purchasing Agent shall advise in writing each contractor which submitted an application whether that contractor has been pre-qualified. In the event that a contractor is denied pre-qualification, the written notification to such contractor shall state the reasons for such denial of pre-qualification and the factual basis of such reasons.

A decision by the Purchasing Agent denying pre-qualification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in 6.1 of this Policy.

The Purchasing Agent may deny pre-qualification to any contractor only if the Purchasing Agent finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Purchasing Agent shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement;
2. The contractor does not have appropriate experience to perform the construction project in question;
3. The contractor or any officer, director or owner thereof has had judgements entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
4. The contractor has been in substantial noncompliance with the terms and conditions of prior comparable construction contracts with any public body without good cause; provided however, the Purchasing Agent shall not deny pre-qualification to the contractor unless the facts underlying the substantial noncompliance were documented in writing and the contractor has been furnished a copy of the information thereto with the opportunity to respond;
5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of the following provisions of the Code of Virginia: (i) Article 4 (Section 2.2-4367 et seq.), (ii) the Virginia Governmental Frauds Act (Section 18.2-498.1 et seq.), (iii) Chapter 4.2 (Section 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the Purchasing Agent in a timely manner any information requested by the Purchasing Agent relevant to subdivisions 1 through 6 of this subsection.

(3) Notice of Invitation to Bid. Notice inviting bids shall be published in at least one newspaper with general circulation in the County. Publication shall occur at least ten (10) days preceding the last day set for the receipt of bids. The newspaper notice shall include a general description of the proposed purchase or sale and where bid documents may be obtained.

The Purchasing Agent shall also solicit sealed bids from prospective suppliers who have requested their names to be added to a "bidders list" which the Purchasing Agent shall maintain. Invitations sent to vendors on the "bidders list" shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent. Placement on the "bidders list" is no guarantee of solicitation for bids and/or quotes.

The Purchasing Agent shall post pending purchases or sales by notice in the Purchasing Office.

(4) Use of Brand Names. Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand name, make or manufacturer, but rather conveys the general style, type, character, and quality of the articles desired, and any article which the Purchasing Agent in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

(5) Rejection of Bids and Waiver of Informalities. An Invitation for Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals may be canceled or rejected in whole or in part. Informalities in bids may be waived when the Purchasing Agent determines that it is in the best interest of Fauquier County to do so. The reasons for cancellation or rejection of bids, solicitations or proposals or the waiver of any informality shall be made a part of the record in the matter.

(6) Bid Opening. All bids must be opened in public.

(7) Negotiation with Lowest Responsible Bidder. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Purchasing Agent may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiation may be undertaken only under conditions and procedures described in writing prior to issuance of the Invitation to Bid and summarized therein.

(8) Withdrawal of Bid Due to Error.

- A. A bidder for a construction contract may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The procedure for bid withdrawal must be stated in the advertisement for bids. The Purchasing Agent shall select one of these procedures:
- (i) The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and at the request of the Purchasing Agent shall submit original work papers with such notice; or
  - (ii) The bidder shall submit to the Purchasing Agent his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, such work papers, documents and materials shall be deemed a trade secret pursuant to Section 2.1-342.B.58 of the Virginia Code. The bids shall be opened one day following the time documented in the Invitation For Bid for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.
- B. Procedures for the withdrawal of bids for other than construction contracts may be established by the Purchasing Agent.
- C. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).
- D. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- F. If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing stating the reasons for his decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

(9) Bid Award. Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of the invitation to bid provide that multiple awards may be made, awards may be made to more than one bidder.

Unless canceled or rejected in accordance with Section 4.1(7) of this Policy, a responsive bid from the lowest responsible bidder shall be accepted as submitted except as provided in Section 4.1(9) of this Policy.

When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Purchasing Agent and filed with the other papers relating to the transaction.

(10) Tie Bids.

- A. In the case of a tie bid, preference shall be given to goods, services and construction produced in Fauquier County or provided by persons, firms or corporations having principal places of business in Fauquier County, if such a choice is available.
- B. Except as provided in Subsection (A.) in the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available.
- C. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.
- D. Notwithstanding the provisions of subsections B and C, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.
- E. In the event that none of the foregoing provisions of this section resolve the tie, the Purchasing Agent may decide the tie by lot or cancel the solicitation and rebid.

(11) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bid may be issued requesting the submission of un-priced offers. Bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation shall be invited to submit priced offers.

(12) Contract Pricing Arrangement. Except in case of emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. A Policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carriers administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section. Architect/engineer and similar contracts which are based on a percentage of construction cost shall not be prohibited by this section, providing the construction contract is not awarded by or to that architect/engineer or similar contracts.

(13) Multi-Term Contracts

- A. Specified Period. Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of Fauquier County provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

- B. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

(14) Modification of the Contract.

- A. A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five (25) percent of the contract or \$50,000, whichever is greater, without the advance written approval of the Board of Supervisors or the School Board as applicable. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.
- B. Nothing in this section shall prevent Fauquier County from placing greater restrictions on contract modifications.

(15) Retainage on Construction Contracts.

- A. In any contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent (95%) of the earned sum when payment is due, with not more than five (5%) being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.
- B. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.
- C. Nothing in this section shall preclude the Purchasing Agent from establishing retainage for contracts other than construction.

(16) Bid Bonds on Construction Contracts. Except in cases of emergency, all bids or proposals for construction contracts in excess of One Hundred Thousand Dollars (\$100,000) shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the amount bid. Nothing in this section shall preclude the Purchasing Agent from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than One Hundred Thousand Dollars (\$100,000).

No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

(17) Performance and Payment Bonds for Construction Contracts.

- A. Upon the award of any construction contract exceeding One Hundred Thousand Dollars (\$100,000) awarded to any prime contractor, such contractor shall furnish to Fauquier County the following bonds:
  - (i) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

(ii) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

- B. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
- C. Bonds shall be made payable to Fauquier County or Fauquier County School Board as appropriate.
- D. Each of the bonds shall be filed with the Purchasing Agent.
- E. Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below One Hundred Thousand Dollars (\$100,000).
- F. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

(18) Action on Performance Bonds. No action against the surety on a performance bond shall be brought unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such.

(19) Action on Payment Bonds.

- A. Subject to the provisions of subsection B. hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of work provided in any contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
- B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under (17)F of this section, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.

Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under (17) F of this section, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- C. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

(20) Alternative Forms of Security.

- A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- B. If approved by Fauquier County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to Fauquier County equivalent to a corporate surety's bond.

(21) Bonds for Other than Construction Contracts. At the discretion of the Purchasing Agent bidders may be required to submit with their bid, a bid bond in an amount determined by the Purchasing Agent and specified in the Invitation to Bid, as a guarantee that if the contract is awarded to such bidder, that the bidder will enter into the contract for the work mentioned in the bid. Additionally, the Purchasing Agent may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

(22) Insurance. Vendors providing services will be required to carry adequate insurance to protect Fauquier County from loss in case of accident, fire, theft, etc. throughout the term of the service contract. Proof of adequate insurance shall be furnished to the Purchasing Agent prior to acceptance of an award. The specific insurance requirements will be defined by Risk Management and will be included in the Request for Proposal or Invitation to Bid.

4.2 Competitive Negotiation.

(1) Competitive Negotiation for Goods or Services Other Than Professional Services.

A. Conditions for Use.

1. Upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public; goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.
2. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

i. for the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000; or

ii. for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

- B. Request for Proposal. The Purchasing Agent shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.
- C. Public Notice. Public notice of the Request for Proposal shall be given at least ten days prior to the date set for receipt of proposals by publication in a newspaper with general circulation in the County. In addition, proposals may be solicited directly from potential contractors.
- D. Receipt of Proposals. Proposals shall not be made public and shall be handled so as to not permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation.
- E. Selection and Award. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposal, including price if so stated in the request for proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, Fauquier County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should Fauquier County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

(2) Competitive Negotiation for Professional Services.

- A. Conditions for Use. Contracts for professional services, as defined in section 1.4 of this Policy, the cost of which the aggregate is expected to exceed Thirty Thousand Dollars (\$30,000), shall be entered into in the following manner. Services estimated to cost less than Thirty Thousand Dollars (\$30,000) may be procured in accordance with the procedures for Competitive Sealed Bidding, Competitive Negotiation for Goods and Services other than Professional Services, Competitive Negotiation for Professional Services or any other method that is authorized by this Policy, at the discretion of the Purchasing Agent.
- B. Request for Proposals. The Purchasing Agent shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. Request for Proposals shall not, however, request that offerors furnish estimates of man-hours or cost for services.



- C. Public Notice. Public Notice of the Request for Proposal shall be given at least ten days prior to the date set for receipt of proposals by publication in a newspaper of general circulation in the County. In addition, proposals may be solicited directly from potential contractors.
- D. Selection and Award. Fauquier County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage, Fauquier County may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, non-binding estimates of prices for services.

Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the discussions, and upon the basis of evaluation factors published in the request for proposal and all information developed in the selection process, Fauquier County shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed the most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to Fauquier County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should Fauquier County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

#### 4.3 Sole Source Procurement.

A contract may be awarded without competition when it is determined in writing, after conducting a good faith review of available sources, that there is only one source practicably available for the required good, service, insurance or construction item. Negotiations shall be conducted, as appropriate, to obtain the best price, delivery, and terms. A written notice shall be issued stating that only one source was determined to be practicably available, identify that which is being procured, the contractor selected and the date on which the contract will be awarded. For purchases exceeding \$15,000, a notice of intent to award shall be posted in the Purchasing Division on the day of award or the decision to award is announced, whichever occurs first.

#### 4.4. Emergency Purchases.

An emergency may arise in order to protect personal safety, life or property, i.e., an occurrence of a serious, urgent and threatening nature that demands immediate action to avoid termination of essential services or a dangerous condition. In such cases, a Purchase Order or contract may be awarded by the Procurement Department without competitive bidding or competitive negotiation; however, such procurement shall be made with as much competition as is practicable under the circumstances. A written determination and justification establishing the basis for the emergency and for the selection of the particular contractor/vendor must be submitted by the requesting department to the Purchasing Agent prior to creating an obligation. The Purchasing Agent with the concurrence of the County Administrator/or the School Superintendent, as appropriate, will approve or disapprove the purchase as an emergency procurement. The approved written determination shall become part of the procurement file. For purchases with a total cost in excess of \$15,000 a written notice stating that the contract is being awarded, or has been awarded on an emergency basis shall be publicly posted for ten (10) calendar days, beginning on the day of the award or the decision to award is announced, whichever occurs first, or as soon thereafter as is practicable.

Notwithstanding the foregoing, if an emergency occurs at times other than regular business hours, the concerned department may purchase directly the required goods or contractual services. The requesting department shall, however, whenever practicable, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. The requesting department shall also, as soon as practicable, submit to the Purchasing Agent a tabulation of bids received, if any, a copy of the delivery record and a written explanation of the circumstances of the emergency.

#### 4.5 Small Purchases.

Purchases where the estimated total cost of the materials, equipment, supplies, shipping, insurance, construction, or service are not expected to exceed Thirty Thousand Dollars (\$30,000) may be awarded in accordance with procedures delineated in the Purchasing Procedures Manual developed by the Purchasing Agent.

Small purchase procedures shall include but are not limited to the following provisions:

- A. Purchases from nongovernmental sources where the estimated total cost of the goods or services are \$15,000 or greater but less than \$30,000 may be made after soliciting a minimum of four (4) written quotations.
- B. Purchases from nongovernmental sources where the estimated total cost of the goods or services is \$2,000 or greater but less than \$15,000 may be made after soliciting a minimum of three (3) verbal or documented telephonic quotations.
- C. Purchases where the estimated total cost of the goods or services is less than \$2,000 may be made upon receipt of one fair and reasonable price.
- D. Nothing in this section shall preclude the Purchasing Agent from requiring more stringent procedures for purchases made under the small purchase method.

4.6 Collusion among Bidders.

More than one bid from an individual, firm, partnership, corporation or association under the same or different name will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for the work contemplated will cause rejection of all bids in which the bidder is interested. Any or all bids may be rejected if there is any reason for believing that collusion exists among the bidders. Participants in such collusion may not be considered in future bids for the same work. Each bidder, as a condition of submitting a bid, shall certify that he is not a party to any collusive action as herein defined.

4.7 Capital Improvement Projects.

No contract for a Capital Improvement Project that exceeds One Hundred Thousand Dollars (\$100,000) shall be awarded without the concurrence of the Fauquier County Board of Supervisors or School Board as applicable.

4.8 Unauthorized Purchases.

- (1) Whenever any officer or employee of Fauquier County purchases or contracts for any supplies or services contrary to the provisions of the Purchasing Procedure or this Policy, such purchases or contract shall be void and shall not be considered to be an obligation of Fauquier County.
- (2) Any Fauquier County officer or employee making or approving a purchase contrary to the provision of the Purchasing Procedures or this Policy shall be personally liable for the costs of such purchases or contract. If already paid out of Fauquier County funds, the amount thereof may in the name of Fauquier County, be recovered by deduction from that person's compensation or an appropriate legal action instituted.

4.9 Competitive Bidding or Competitive Negotiation on State-Aid Projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by Fauquier County for which state funds of \$30,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under Section 4.2(1)A,2. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act, Sections 2.2-4300 et seq. A person or firm who has been engaged as an architect or engineer for the same project under a separate contract shall not be eligible to bid on or submit a proposal for any such contract or to have the contract awarded to him.

4.10 Public Access to Procurement Information.

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for Fauquier County shall not be open to public inspection.

Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that Fauquier County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed, but prior to award, except in the event Fauquier County decides not to accept any of the proposals or decides to reopen the contract. Subject to the provisions of this Section, proposal records shall be open to public inspection after award of the contract.

Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

Pursuant to Section 2.2-4342 of the Code of Virginia, trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or pre-qualification application shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

#### 4.11 Employment Discrimination by Contractor Prohibited.

Every contract of over \$10,000.00 shall include the provisions contained in subsections (1) and (2) below:

- (1) During the performance of this contract, the contractor agrees as follows:
  - A. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - B. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an Equal Opportunity Employer.
  - C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- (2) The contractor will include the provisions of the foregoing paragraphs A, B and C in every subcontract or purchase order of over \$10,000.00 so that the provisions will be binding upon each subcontractor or vendor.

#### 4.12 Exemptions.

Purchases exempted from competitive procurement include inter-governmental purchases, purchases from state government agencies which offer services or goods to Virginia political subdivisions, purchases of goods or services produced or performed by nonprofit sheltered workshops serving the handicapped or which are produced or performed by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped or other nonprofit organizations which offer transitional or supported employment services serving the handicapped, legal services, provided that pertinent provisions of Chapter 11, (2.1-117 et seq.) of Title 2.1 of the Virginia Code remain applicable and expert witnesses and other services associated with litigation or regulatory proceedings.

Fauquier County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which Fauquier County is a member, if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of

competitive principles and provided that the Purchasing Agent has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

## **ARTICLE 5 - DEBARMENT**

### **5.1 Authority to Debar or Suspend.**

After ten days written notice to the person involved and with no legal action taken by that person per 6.8 of this Policy, the Purchasing Agent may debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The Purchasing Agent may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding six months. When debarment or suspension occurs, such debarment or suspension shall be considered to be just cause for cancellation of any existing contracts held by the person or business debarred or suspended.

The causes for debarment or suspension shall include:

- (1) Conviction for commission of a criminal offense relating to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Conviction under state or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
- (3) Conviction under state or federal antitrust statutes rising out of the submission of bids or proposals;
- (4) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
- (5) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (6) Any other cause determined to be so serious and compelling as to affect responsibility as a Fauquier County' contractor, including debarment or suspension by another governmental entity for any cause in this Policy; and for violation of the ethical standards set forth in this Policy.

5.2 Decision to Debar or Suspend.

The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial review.

5.3 Notice of Decision.

A copy of the decision required by 5.2 shall be final and conclusive unless legal action is taken by the debarred or suspended person as provided for in 6.8 of this Policy.

**ARTICLE 6 - APPEALS AND REMEDIES FOR BID PROTESTS**

6.1 Ineligibility of Bidder, Offeror or Contractor.

Any bidder, offeror or contractor refused permission to participate, or disqualified from participating, in contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror or contractor appeals within thirty days of receipt by instituting legal action as provided in 6.8 of this Policy.

If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility.

6.2 Appeal of Denial of Withdrawal of Bid.

A decision denying withdrawal of bid under the provisions of Section 4.1 (9) of this Policy shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action as provided in Section 6.8 B. of this Policy.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of Section 4.1 (10) of this Policy, prior to appealing, shall deliver to the Purchasing Agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

6.3 Determination of Non-Responsibility.

Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless legal action is taken within ten days by the bidder as provided in Section 6.8 A. of this Policy.

If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder or offeror is a responsible bidder for the contract in question. If it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award has been made, the relief shall be as set forth in Section 6.4 B. of this Policy. A bidder or offeror contesting a determination that he is not a responsible bidder or offeror for a particular contract shall proceed under this section, and may not protest the award or proposed award under Section 6.4 of this Policy.

Nothing contained in this section shall be construed to require Fauquier County, when procuring by the Competitive Negotiation method to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

6.4 Protest of Award or Decision to Award.

- A. Any bidder or offeror who desires to protest the award or decision to award of a contract shall submit such protest in writing to the County Administrator or the Superintendent of Schools as defined in the Terms and Conditions of the IFB or RFP, as applicable, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Administrator or the Superintendent of Schools shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision by instituting legal action as provided in Section 6.8 C. of this Policy.
- B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- C. When the Purchasing Agent determines after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 8 of this Policy, the Purchasing Agent may enjoin the award of the contract to a particular bidder.

6.5 Effect of Appeal upon Contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this Policy shall not be affected by the fact that a protest or appeal has been filed.

6.6 Stay of Award During Protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

6.7 Contractual Disputes.

Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment, however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claim shall not delay payment of amounts agreed due in the final payment.

A procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the Purchasing Agent.

The decision of the Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the decision on the claim by the Purchasing Agent to Fauquier County in accordance with the requirements of Sections 15.1-550 through 554 of the Virginia Code.

A contractor may not institute legal action as provided in Section 6.8 E. of this Policy prior to receipt of Fauquier County's decision on the claim.

6.8 Legal Actions.

- A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Circuit Court of Fauquier County challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious or that such decision was not based upon the criteria for denial of pre-qualification set forth in subsection 4.1.
- B. A bidder denied withdrawal of a bid under Section 6.2 of this Policy may bring an action in the Circuit Court of Fauquier County challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Purchasing Agent was clearly erroneous.
- C. A bidder, offeror or contractor may bring an action in the Circuit Court of Fauquier County challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, this Policy or the terms and conditions of the Invitation to Bid or Request for Proposal.
- D. If injunctive relief is granted, the court, upon request of Fauquier County, shall require the posting of reasonable security to protect Fauquier County.
- E. Subject to procedures in Section 6 of this Policy, a contractor may bring an action involving a contract dispute with Fauquier County in the Circuit Court of Fauquier County.
- F. Nothing herein shall be construed to prevent Fauquier County from instituting legal action against a contractor.



## **ARTICLE 7 - ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES**

### **7.1 Small and Disadvantaged Participation.**

The Procurement Department shall cooperate with state and federal agencies to facilitate the participation of small and disadvantaged businesses in the procurement transactions of Fauquier County. Fauquier County grants no preferences or set-asides to small and disadvantaged businesses. The Purchasing Agent shall assist any small or disadvantaged business in completing or understanding bids or proposals.

### **7.2 Discrimination Prohibited.**

In the solicitation of awarding of contracts, Fauquier County shall not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror.

## **ARTICLE 8 - ETHICS IN PUBLIC CONTRACTING**

### **8.1 Purpose.**

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to the following acts contained within the Code of Virginia, the Comprehensive Conflict of Interests Act (Sections 2.1-599 et seq.), the Virginia Governmental Frauds Act (Section 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia as amended. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the Comprehensive Conflict of Interests Act.

### **8.2 Definitions.**

The words defined in this section shall have the meanings set forth below throughout this article.

"Immediate family" shall mean spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" shall mean a material financial interest as defined in the Comprehensive Conflict of Interests Act.

"Procurement transaction" shall mean all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Employee" shall mean any person employed by a public body of Fauquier County, including elected officials or appointed members of governing bodies.

### **8.3 Proscribed Participation by Employees in Procurement Transactions.**

No employee having official responsibility for a procurement transaction shall participate in that transaction of behalf of the public body when the employee knows that:

- (1) The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction; or
- (2) The employee, the employee's partner, or any member of the employee's

immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or

- (3) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with the bidder, offeror or contractor.

8.4 Solicitation or Acceptance of Gifts.

No employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged. Fauquier County may recover the value of anything conveyed in violation of this section.

8.5 Disclosure of Subsequent Employment.

No employee or former employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by Fauquier County, unless the employee or former employee provides written notification to the Board of Supervisors and/or the School Board prior to commencement of employment by that bidder, offeror or contractor.

8.6 Gifts by Bidders, Offerors, Contractors or Subcontractors.

No bidder, offeror, contractor or subcontractor shall confer upon any employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

8.7 Kickbacks.

No contractor or subcontractor shall demand or receive from any of his suppliers or subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

No person shall demand or receive any payment, loan, subscription, advance, deposit or money services or anything of value in return for an agreement not to compete on a contract.

If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order, and ultimately borne by Fauquier County and will be recoverable from both the maker and the recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

8.8 Purchase of Building Materials, etc., from Architect or Engineer Prohibited.

No building materials, supplies or equipment for any building or structure constructed by or for Fauquier County shall be sold by or purchased from any person employed as an independent contractor by Fauquier County to furnish architectural or engineering services, but not construction for such building or structure; or from any partnership, association, or corporation in which such architect or engineer has a personal interest as defined in Section 2.1-639.2 of the Code of Virginia.

No building materials, supplies or equipment for any building or structure constructed by or for Fauquier County shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by Fauquier County to furnish architectural or engineering services in which such person has a personal interest as defined in Section 2.1-639.2 of the Code of Virginia.

The provisions of this section shall not apply in the case of an emergency.

8.9 Misrepresentations Prohibited.

No employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

8.10 Certification of Compliance Required; Penalty for False Statements.

- (A) Fauquier County requires employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions, a written certification that they complied with the provisions of the Code of Virginia.
- (B) Any employee required to submit a certification as provided in subsection (A) of this section who knowingly makes a false statement in such certification shall be punished as provided in Section 8.11 of this Policy.

8.11 Penalty for Violation.

Upon conviction of a willful violation of ethics in the public contracting provisions under Section 2.2-4377 of the Code of Virginia, any employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.